

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
CYCLE-CRAFT CO., INC.	)	
d/b/a BOSTON HARLEY-DAVIDSON/BUELL,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION
	)	NO. 04 11402 NMG
HARLEY-DAVIDSON MOTOR COMPANY, INC.	)	
and BUELL DISTRIBUTION COMPANY, LLC,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' POSITION STATEMENT CONCERNING DEPOSITION  
DESIGNATIONS OF STEVEN VERDUYN**

**I. Harley-Davidson Has Asserted Valid Objections to the Testimony Designated by Plaintiff**

**A. April 6, 2005 Deposition**

1. Harley-Davidson objects to Page 58, Lines 5-17 on grounds that the testimony is incomplete under Fed.R.Civ.P. 32(d)(4). Harley-Davidson has requested that Page 57, Line 17 to Page 58, Line 4 and Page 58, Line 18 to 25 be added to this designation to make it complete. Plaintiff has refused. Accordingly, the requested designation should be excluded or plaintiff should include the additional designations proposed by Harley-Davidson. Attached hereto as Exhibit A is the complete testimony that should be read to the jury.

2. Harley-Davidson objects to Page 88, Line 16 to Page 90, Line 18, and Page 92, Line 5-17 (attached hereto as Exhibit B). These designations relate to (i) a "gray market dealer" in the State of New York, (ii) whether dealers are provided lists of such gray market dealers, (iii) whether this issue was discussed with counsel, (iv) and whether Mr. Verduyn thought it was a good idea to provide such a list to dealers. All of

-2-

this testimony is irrelevant to whether Harley-Davidson has good cause to terminate Cycle-Craft. Further, Mr. Verduyn's opinion should be excluded pursuant to Rule 701.

3. Harley-Davidson objects to Page 128, Lines 6-22 (attached hereto as Exhibit C). Plaintiff attempts to elicit Mr. Verduyn's recollection concerning what Ronald Buchbuam, plaintiff's general manager, told him at the audit. Such testimony is plainly inadmissible hearsay and should be excluded.

**B. May 26, 2005 Deposition**

4. Harley-Davidson objects to Page 273, Lines 2-6 (attached hereto as Exhibit D). Whether a Director of Field Operations ("DFO") accompanied Mr. Verduyn on any other audits he has conducted over his career at Harley-Davidson is simply irrelevant. The testimony should be excluded.

Respectfully submitted by,

**Harley-Davidson Motor Company, Inc.,  
and Buell Distribution Company, LLC**

By their attorneys,

/s/ William F. Benson

William N. Berkowitz, BBO# 544148

William F. Benson, BBO# 646808

David M. Magee, BBO# 652399

BINGHAM McCUTCHEN LLP

150 Federal Street

Boston, MA 02110

Ph: (617) 951-8000

Fx: (617) 951-8736

Dated: July 31, 2006

-3-

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand on July 31, 2006.

/s/ William F. Benson  
William F. Benson